

FILED

JAN - 9 2007

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MAVERICK RECORDING COMPANY, a §
California joint venture; UMG RECORDINGS, §
INC., a Delaware corporation; ARISTA §
RECORDS LLC, a Delaware limited liability §
company; WARNER BROS. RECORDS INC., a §
Delaware corporation; and SONY BMG MUSIC §
ENTERTAINMENT, a Delaware general §
partnership, §

Plaintiffs,

VS.

STEVE HARPER,

Defendant.

CIVIL ACTION NO.

S A07 CA0026 XR

PLAINTIFFS' COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiffs, by their attorneys, complain of the Defendant, and would show:

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. §101 et seq.).
2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. §1331 (federal question); and 28 U.S.C. §1338(a) (copyright).
3. This Court has personal jurisdiction over the Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that the Defendant resides in this District, and the acts of infringement complained of herein occurred in this District.

PARTIES

4. Plaintiff Maverick Recording Company is a joint venture between SR/MDM Venture Inc. and Maverick Records LLC, organized and existing under the laws of the State of California, with its principal place of business in the State of California.

5. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

6. Plaintiff Arista Records LLC is a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

7. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

8. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general partnership, with its principal place of business in the State of New York.

9. Plaintiffs are informed and believe that Defendant is an individual residing in this District.

COUNT I INFRINGEMENT OF COPYRIGHTS

10. Plaintiffs incorporate herein by this reference each and every allegation contained in each paragraph above.

11. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of exclusive rights under United States copyright with respect to certain copyrighted sound recordings (the "Copyrighted Recordings"). The Copyrighted Recordings include but are not limited to each of the copyrighted sound recordings identified in Exhibit A attached hereto, each of which is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights. In addition to

the sound recordings listed on Exhibit A, Copyrighted Recordings also include certain of the sound recordings listed on Exhibit B which are owned by or exclusively licensed to one or more of the Plaintiffs or Plaintiffs' affiliate record labels, and which are subject to valid Certificates of Copyright Registration issued by the Register of Copyrights.

12. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted Recordings to the public.

13. Plaintiffs are informed and believe that Defendant, without the permission or consent of Plaintiffs, has used, and continues to use, an online media distribution system to download the Copyrighted Recordings, to distribute the Copyrighted Recordings to the public, and/or to make the Copyrighted Recordings available for distribution to others. In doing so, Defendant has violated Plaintiffs' exclusive rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and exclusive rights under copyright.

14. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on each respective album cover of each of the sound recordings identified in Exhibit A. These notices of copyright appeared on published copies of each of the sound recordings identified in Exhibit A. These published copies were widely available, and each of the published copies of the sound recordings identified in Exhibit A was accessible by Defendant.

15. Plaintiffs are informed and believe that the foregoing acts of infringement have been willful and intentional, in disregard of and with indifference to the rights of Plaintiffs.

16. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for

Defendant's infringement of each of the Copyrighted Recordings. Plaintiffs further are entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

17. The conduct of Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing Plaintiffs' copyrights, and ordering Defendant to destroy all copies of sound recordings made in violation of Plaintiffs' exclusive rights.

For these reasons, Plaintiffs pray for judgment against Defendant as follows:

1. For an injunction providing:

"Defendant shall be and hereby is enjoined from directly or indirectly infringing Plaintiffs' rights under federal or state law in the Copyrighted Recordings and any sound recording, whether now in existence or later created, that is owned or controlled by Plaintiffs (or any parent, subsidiary, or affiliate record label of Plaintiffs) ("Plaintiffs' Recordings"), including without limitation by using the Internet or any online media distribution system to reproduce (*i.e.*, download) any of Plaintiffs' Recordings, to distribute (*i.e.*, upload) any of Plaintiffs' Recordings, or to make any of Plaintiffs' Recordings available for distribution to the public, except pursuant to a lawful license or with the express authority of Plaintiffs. Defendant also shall destroy all copies of Plaintiffs' Recordings that Defendant has downloaded onto any computer hard drive or server without Plaintiffs' authorization and shall destroy all copies of those downloaded recordings transferred onto any physical medium or device in Defendant's possession, custody, or control."

2. For statutory damages for each infringement of each Copyrighted Recording pursuant to 17 U.S.C. Section 504.

3. For Plaintiffs' costs in this action.
4. For Plaintiffs' reasonable attorneys' fees incurred herein.

5. For such other and further relief, either at law or in equity, general or special, to which they may be entitled.

DATED: January 9, 2007

OF COUNSEL:

Geoffrey H. Bracken
State Bar No. 02809750
Gardere Wynne Sewell LLP
1000 Louisiana, Suite 3400
Houston, Texas 77002-5007
Tel: 713-276-5555

Respectfully submitted,

By: 

Stacy R. Obenhaus
State Bar No. 15161570
Lisa L. Honey
State Bar No. 24048550
Gardere Wynne Sewell LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201-4761
Tel: 214- 999-3000
Fax: 214-999-4667
sobenhaus@gardere.com

ATTORNEYS FOR PLAINTIFFS

EXHIBIT A

EXHIBIT A**STEVE HARPER**

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Maverick Company	Recording Michelle Branch	You Get Me	The Spirit Room	303-732
UMG Recordings, Inc.	Ja Rule	6 Feet Underground	Rule 3:36	270-080
Arista Records LLC	Avril Lavigne	I'm With You	Let Go	312-786
UMG Recordings, Inc.	Counting Crows	Hangin' Around	This Desert Life	271-316
Warner Bros. Records Inc.	Faith Hill	Just to Hear You Say That You Love Me	Faith	253-752
SONY BMG MUSIC ENTERTAINMENT	Indigo Girls	Closer to Fine	Indigo Girls	101-524

EXHIBIT B

User	Filename	Artist	Size	Media Type
whiterney@fileskare	Country_Rockabilly_Folk--Ol' 97's - Timeborn.mp3	Old 97's	2,942KB	Audio
whiterney@fileskare	james mcmurtry - walk between the raindrops.mp3	James McMurtry	1,157KB	Audio
whiterney@fileskare	Wild Man From Borneo.mp3	James McMurtry	4,792KB	Audio
whiterney@fileskare	James McMurtry - Safe Side.mp3	James McMurtry	3,968KB	Audio
whiterney@fileskare	James McMurtry - Red Dress.mp3	James McMurtry	4,570KB	Audio
whiterney@fileskare	Tired of Walking.mp3	James McMurtry	3,912KB	Audio
whiterney@fileskare	Comfortable.mp3	James McMurtry	3,424KB	Audio
whiterney@fileskare	For All I Know_1224123206.mp3	James McMurtry	3,722KB	Audio
whiterney@fileskare	Every Little Bit Counts.mp3	James McMurtry	4,028KB	Audio
whiterney@fileskare	String Cheese Incident - Pirates (live).mp3	String Cheese Incident	8,856KB	Audio
whiterney@fileskare	James McMurtry - Where's Johnny.mp3	James McMurtry	4,454KB	Audio
whiterney@fileskare	String Cheese Incident- Hey pocky Way.mp3	Unknown	7,842KB	Audio
whiterney@fileskare	Alt Country-Reckless Kelly - Hey Say May.mp3	Reckless Kelly	2,448KB	Audio
whiterney@fileskare	Be With Me.mp3	James McMurtry	6,498KB	Audio
whiterney@fileskare	String Cheese Incident - Galactic.mp3	String Cheese Incident	6,804KB	Audio
whiterney@fileskare	James McMurtry_Too Long In The Wasteland.mp3	James McMurtry	3,819KB	Audio
whiterney@fileskare	James McMurtry - Talkin at the Texaco.mp3	America	3,853KB	Audio
whiterney@fileskare	Troop - Sweet November.mp3	Troop	4,513KB	Audio
whiterney@fileskare	The Time Of My Life - Dirty Dancing.mp3	DIRTY DANCING	2,836KB	Audio
whiterney@fileskare	Hootie and the Blowfish - Only wanna be with you.mp3	Hootie and the Blowfish	3,076KB	Audio
whiterney@fileskare	09. On The Grind.mp3	Nelly - Nellyville	5,578KB	Audio
whiterney@fileskare	Ja rule - 6 Feet Underground.mp3	Ja Rule	4,769KB	Audio
whiterney@fileskare	kasey chambers - Changed The Locks (live).mp3	Kasey Chambers	3,892KB	Audio
whiterney@fileskare	Kasey Chambers - Southern Kind of Life.mp3	Kasey Chambers	3,762KB	Audio
whiterney@fileskare	Nickle Creek - Cross The Bridge (1).mp3	Nickle Creek	3,375KB	Audio
whiterney@fileskare	Something Corporate - Wait .mp3	Something Corporate	4,023KB	Audio
whiterney@fileskare	Fabulous Featuring Tamia.mp3	Fabulous Ft. Tamia	6,442KB	Audio
whiterney@fileskare	Chris Knight - Love And A .45.mp3	Chris Knight	3,044KB	Audio
whiterney@fileskare	Misery (Feat Steven Tyler).mp3	Pink	4,256KB	Audio
whiterney@fileskare	Country Creek - Under the Stars.mp3	Country Creek	3,095KB	Audio

User	Filename	Artist	Size	Media Type
whiterney@fileskare	Misery (Feat. Steven Tyler).mp3	Pink	4,256KB	Audio
whiterney@fileskare	Counting Crows - Hangin' Around.mp3	Counting Crows	3,895KB	Audio
whiterney@fileskare	Counting Crows (Adam Duritz) - Ordinary Superman.mp3	Counting Crows	3,237KB	Audio
whiterney@fileskare	Musiq Soulchild - Don't Change.mp3	Musiq	4,760KB	Audio
whiterney@fileskare	Rent - 1-14 - Out Tonight (1).mp3	Rent	2,682KB	Audio
whiterney@fileskare	Les Miserables - Master Of The House.mp3	Les Mis	4,025KB	Audio
whiterney@fileskare	Musiq - Luv, MP3	Musiq Soul Child	4,762KB	Audio
whiterney@fileskare	diary of dreams - colorblind.mp3	Diary Of Dreams	5,100KB	Audio
whiterney@fileskare	(B) Movie Songs - My Best Friends Wedding - Together Fo...	My best Friends wedding	2,346KB	Audio
whiterney@fileskare	(How to Lose a Guy in Ten Days) - Carly Simon - Your So Va...	How to Lose a Guy in Ten...	4,036KB	Audio
whiterney@fileskare	(How to Lose a Guy in Ten Days) - Luce - Good Day.mp3	How to Lose a Guy in Ten...	2,963KB	Audio
whiterney@fileskare	(Pat Green) Take Me Down To The River.mp3	Pat Green	2,708KB	Audio
whiterney@fileskare	01 I Drove All Night.wma	Unknown	3,787KB	Audio
2 Users	02 - Keith Urban - Somebody Like You (Album Version) (1)...	Keith Urban	4,985KB	Audio
whiterney@fileskare	05 - Forever And For Always.mp3	Shania Twain	4,480KB	Audio
2 Users	08 - TLC - Damaged.mp3	TLC	5,463KB	Audio
whiterney@fileskare	09 What A Beautiful Day - Chris Cagle.mp3	Chris Cagle	3,564KB	Audio
whiterney@fileskare	09-forever and a night-girls aloud-girls aloud.mp3	girls aloud	5,982KB	Audio
whiterney@fileskare	14 The Rock Project Ft Tina Arena - Never (Radio Edit).mp3	The Rock Project Ft Tina ...	5,241KB	Audio
whiterney@fileskare	2pac + Phil Collins - In The Air Of Tonight (Maniac Bone Rm...	Tupac and Phil Collins	3,724KB	Audio
whiterney@fileskare	702-let_your_hair_down-rns	Unknown	3,909KB	Audio
whiterney@fileskare	Allison Krauss - Just When I Needed You Most.mp3	Allison Krauss Dolly Part...	3,930KB	Audio
whiterney@fileskare	Allison Krauss - Union Station - When You Say Nothing At ...	Allison Krauss Union Sta...	4,010KB	Audio
whiterney@fileskare	Allison Krauss - Let Me Touch You For Awhile.mp3	Allison Krauss + Union Stat...	3,154KB	Audio
whiterney@fileskare	Allison Krauss - Union Station - Lose Again.mp3	Allison Krauss Union Sta...	2,742KB	Audio
whiterney@fileskare	Allison Krauss - Baby, Now That I've Found You.mp3	Allison Krauss	3,582KB	Audio
whiterney@fileskare	Allison Krauss - I'll Fly Away.mp3	Allison Krauss	3,722KB	Audio
whiterney@fileskare	allison krauss-I can let go now.mp3	Allison Krauss	2,306KB	Audio
whiterney@fileskare	Bela Fleck and the Flecktones - Big Country.mp3	Bela Fleck and the Fleck...	5,176KB	Audio
whiterney@fileskare	Bella Fleck and the Flecktones - Tunnel Avenue.mp3	Bella Fleck and the Fleck...	5,390KB	Audio

